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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,232	09/17/2003	Carlos Fernando Bella Cruz	END920000033US2 (13467Z)	6285
23389	7590	07/05/2006	EXAMINER ADE, OGER GARCIA	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			ART UNIT 3627	PAPER NUMBER

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,232

Applicant(s)

CRUZ ET AL.

Examiner

Steven B. McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/21/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 12, 14, 15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 9, 11, 12, 14, 15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8, 9, 11, 12, 14, 15, and 17-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 8, 9, 11, 12, 14, 15, and 17-20 are non-statutory because they are not concrete and tangible. No result or output is presented – rather data is just manipulated.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8, 11, 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Kalagnanam et al (6,044,361).

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

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under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Kalagnanam ('361) shows identifying orders from customers for finished units; identifying finished units available to fill order; identifying defects in the units and defects that the customers are willing to accept (col. 2, lines 27-33, 58-68); on the basis of the defects: identifying valid units that are available to orders; and iteratively assigning and unassigning the orders until all orders are filled or there are no more assignment option, wherein if no available unit fulfills an order, a previously assigned unit which fulfills the order is unassigned from its previous match and reassigned to the present order (cols. 4-6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 12, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalagnanam et al as applied to claims 8, 11, and 14 above, and further in view of Dye (4,459,663).

Kalagnanam shows all elements of the claims except identifying incomplete orders and due date and assigning units to the earliest orders. Dye shows these elements. It would have been obvious to one of ordinary skill in the art to further modify the method of Kalagnanam by identifying the date of orders and assigning items to the earliest orders in order to avoid missing a delivery date.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalagnanam et al .

Kalagnanam shows that the finished units are metallic units. It does explicitly show identifying for each of a group of orders the largest area of each of the units that can be assigned to the order.

However, the examiner takes official notice that it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to modify the method of Kalagnanam by identifying the largest area of the metallic units that can be assigned to the orders in order to reduce waste.

Claims 8, 11, 13, 14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Production Planning and Scheduling" (ACESITA).

ACESITA shows identifying finished units and orders for those units; identifying valid finished units that are available to be assigned to the orders; and units to orders (see e.g., pgs. 22, 42). ACESITA further shows identifying defects in the units; identifying defects the customers are willing to accept; and assigning units on that basis. (It is noted that ACESITA recites that the system “matches the relevant attributes of the material to the specification of the order and determines the eligibility of the material for a given order”. It continues to state that factors such as “quality”, or relative presence of defects, are considered in assigning the material to orders.) ACESITA does not explicitly show iteratively assigning and unassigning in a defined sequence until all order are fulfilled or no options are left, wherein if no units are available to fulfill an order, a previously assigned valid unit is found and unassigned from the order to which was assigned.

However, the examiner takes official notice that it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the arts to modify the method of ACESITA by iteratively assigning and unassigning units to orders wherein if no units are available to fulfill an order, a previously assigned valid unit is found and unassigned from the order to which was assigned in order to ensure that all possible options are tested so that the most efficient option can be used.

As to claims 17-19, ACESITA shows that the finished units are metallic units and applying the units to the orders according to business rules. It does explicitly state that

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one of the business rules is to identify the largest portion of metallic units that can be assigned to an order.

However, the examiner takes official notice that it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to further modify the method of ACESITA by identifying the largest area of the metallic units that can be assigned to the orders in order to reduce waste.

Requirement for Information

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

1. Please provide any information published prior to 3/31/2000 which further describes the inventory allocation/reallocation function outlined in the ACESITA document of June, 1996 which was disclosed by Applicant.

2. Was the reallocation outlined in the ACESITA document in use prior to 3/31/1999? If so, please provide a description of the process and apparatus being used at that time.

3. When were following documents first published:

IBM Research Report No. RC 21059 (94164)?

IBM Research Report No. RC 21171 (94615)?

Response to Arguments

Applicant's arguments filed 12/21/2005 have been fully considered but they are not persuasive.

Regarding the 35 USC 101 rejection, the examiner finds Applicant's arguments persuasive in light of the amendment. However, it is noted that the invention is not concrete and tangible because it produces no claimed output.

Regarding the 103 rejection, it is noted that the ACESITA document shows an inventory reallocation function. In Applicant's description of the present invention, it is noted that some of the elements argued are not claimed (e.g., that the unassigned order attains high priority after losing its match).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (571) 272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on (571) 272-6771. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

Steven B. McAllister
Primary Examiner
Art Unit 3627

STEVE B. MCALLISTER
PRIMARY EXAMINER